

REFERENCE TITLE: homeowners' associations; disclosure; declaration  
revisions

State of Arizona  
House of Representatives  
Fifty-first Legislature  
First Regular Session  
2013

# HB 2626

Introduced by  
Representative Petersen

AN ACT

AMENDING SECTIONS 33-1260, 33-1806 AND 33-1817, ARIZONA REVISED STATUTES;  
RELATING TO CONDOMINIUMS AND PLANNED COMMUNITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 33-1260, Arizona Revised Statutes, is amended to  
3 read:

4 33-1260. Resale of units; information required; fees; civil  
5 penalty; applicability; definition

6 A. ~~For condominiums with fewer than fifty units,~~ A unit owner shall  
7 mail or deliver to a purchaser or a purchaser's authorized agent within ten  
8 days after receipt of a written notice of a pending sale of the unit, ~~and for~~  
9 ~~condominiums with fifty or more units, the association shall mail or deliver~~  
10 ~~to a purchaser or a purchaser's authorized agent within ten days after~~  
11 ~~receipt of a written notice of a pending sale~~ that contains the name and  
12 address of the purchaser, ~~all of the following in either paper or electronic~~  
13 format:

- 14 1. A copy of the bylaws and the rules of the association.
- 15 2. A copy of the declaration.
- 16 3. A dated statement containing:

17 (a) The telephone number and address of a principal contact for the  
18 association, which may be an association manager, an association management  
19 company, an officer of the association or any other person designated by the  
20 board of directors.

21 (b) The amount of the common expense assessment for the unit and any  
22 unpaid common expense assessment, special assessment or other assessment, fee  
23 or charge currently due and payable from the selling unit owner. If the  
24 request is made by a lienholder, escrow agent, unit owner or person  
25 designated by a unit owner pursuant to section 33-1256, failure to provide  
26 the information pursuant to this subdivision within the time provided for in  
27 this subsection shall extinguish any lien for any unpaid assessment then due  
28 against that unit.

29 (c) A statement as to whether a portion of the unit is covered by  
30 insurance maintained by the association.

31 (d) The total amount of money held by the association as reserves.

32 (e) If the statement is being furnished by the association, a  
33 statement as to whether the records of the association reflect any  
34 alterations or improvements to the unit that violate the declaration. The  
35 association is not obligated to provide information regarding alterations or  
36 improvements that occurred more than six years before the proposed sale.  
37 Nothing in this subdivision relieves the seller of a unit from the obligation  
38 to disclose alterations or improvements to the unit that violate the  
39 declaration, nor precludes the association from taking action against the  
40 purchaser of a unit for violations that are apparent at the time of purchase  
41 and that are not reflected in the association's records.

42 (f) If the statement is being furnished by the unit owner, a statement  
43 as to whether the unit owner has any knowledge of any alterations or  
44 improvements to the unit that violate the declaration.

1 (g) A statement of case names and case numbers for pending litigation  
2 with respect to the unit filed by the association against the unit owner or  
3 filed by the unit owner against the association. The unit owner or the  
4 association shall not be required to disclose information concerning the  
5 pending litigation that would violate any applicable rule of attorney-client  
6 privilege under Arizona law.

7 (h) A statement that provides "I hereby acknowledge that the  
8 declaration, bylaws and rules of the association constitute a contract  
9 between the association and me (the purchaser). By signing this statement, I  
10 acknowledge that I have read and understand the association's contract with  
11 me (the purchaser). I also understand that as a matter of Arizona law, if I  
12 fail to pay my association assessments, the association may foreclose on my  
13 property." The statement shall also include a signature line for the  
14 purchaser and shall be returned to the association within fourteen calendar  
15 days.

16 4. A copy of the current operating budget of the association.

17 5. A copy of the most recent annual financial report of the  
18 association. If the report is more than ten pages, the association may  
19 provide a summary of the report in lieu of the entire report.

20 6. A copy of the most recent reserve study of the association, if any.

21 7. A statement summarizing any pending lawsuits, except those relating  
22 to the collection of assessments owed by unit owners other than the selling  
23 unit owner, in which the association is a named party, including the amount  
24 of any money claimed.

25 B. A purchaser or seller who is damaged by the failure of the unit  
26 owner or the association to disclose the information required by subsection A  
27 of this section may pursue all remedies at law or in equity against the unit  
28 owner or the association, whichever failed to comply with subsection A of  
29 this section, including the recovery of reasonable attorney fees.

30 C. The association may charge the unit owner a fee of no more than an  
31 aggregate of four hundred dollars to compensate the association for the costs  
32 incurred in the preparation of a statement or other documents furnished by  
33 the association pursuant to this section for purposes of resale disclosure,  
34 lien estoppel and any other services related to the transfer or use of the  
35 property, EXCEPT THAT IF THE SELLER PROVIDES THE DISCLOSURE DOCUMENTS  
36 PRESCRIBED BY THIS SECTION OR IF THE BUYER WAIVES RECEIPT OF THOSE DISCLOSURE  
37 DOCUMENTS, THE ASSOCIATION MAY NOT CHARGE MORE THAN ONE HUNDRED DOLLARS FOR A  
38 TRANSFER FEE FOR THE PROPERTY. In addition, the association may charge a  
39 rush fee of no more than one hundred dollars if the rush services are  
40 required to be performed within seventy-two hours after the request for rush  
41 services, and may charge a statement or other documents update fee of no more  
42 than fifty dollars if thirty days or more have passed since the date of the  
43 original disclosure statement or the date the documents were delivered. The  
44 association shall make available to any interested party the amount of any  
45 fee established from time to time by the association. If the aggregate fee

1 for purposes of resale disclosure, lien estoppel and any other services  
2 related to the transfer or use of a property is less than four hundred  
3 dollars on January 1, 2010, the fee may increase at a rate of no more than  
4 twenty per cent per year based on the immediately preceding fiscal year's  
5 amount not to exceed the four hundred dollar aggregate fee. The association  
6 may charge the same fee without regard to whether the association is  
7 furnishing the statement or other documents in paper or electronic format.

8 D. The fees prescribed by this section shall be collected no earlier  
9 than at the close of escrow and may only be charged once to a unit owner for  
10 that transaction between the parties specified in the notice required  
11 pursuant to subsection A of this section. An association shall not charge or  
12 collect a fee relating to services for resale disclosure, lien estoppel and  
13 any other services related to the transfer or use of a property except as  
14 specifically authorized in this section. An association that charges or  
15 collects a fee in violation of this section is subject to a civil penalty of  
16 no more than one thousand two hundred dollars.

17 E. This section applies to a managing agent for an association that is  
18 acting on behalf of the association.

19 F. A sale in which a public report is issued pursuant to sections  
20 32-2183 and 32-2197.02 or a sale pursuant to section 32-2181.02 is exempt  
21 from this section.

22 G. This section does not apply to timeshare plans or associations that  
23 are subject to chapter 20 of this title.

24 H. THIS SECTION DOES NOT REQUIRE THE PURCHASE OF ASSOCIATION  
25 DISCLOSURE DOCUMENTS, AND THE PURCHASE OF ASSOCIATION DISCLOSURE DOCUMENTS  
26 SHALL NOT BE A CONDITION OF TRANSFERRING TITLE TO A UNIT.

27 ~~H.~~ I. For the purposes of this section, unless the context otherwise  
28 requires, "unit owner" means the seller of the condominium unit title and  
29 excludes any real estate salesperson or real estate broker who is licensed  
30 under title 32, chapter 20 and who is acting as a salesperson or broker, any  
31 escrow agent who is licensed under title 6, chapter 7 and who is acting as an  
32 escrow agent and also excludes a trustee of a deed of trust who is selling  
33 the property in a trustee's sale pursuant to chapter 6.1 of this title.

34 Sec. 2. Section 33-1806, Arizona Revised Statutes, is amended to read:  
35 33-1806. Resale of units; information required; fees; civil  
36 penalty; definition

37 A. ~~For planned communities with fewer than fifty units,~~ A member shall  
38 mail or deliver to a purchaser or a purchaser's authorized agent within ten  
39 days after receipt of a written notice of a pending sale of the unit, ~~and for~~  
40 ~~planned communities with fifty or more units, the association shall mail or~~  
41 ~~deliver to a purchaser or a purchaser's authorized agent within ten days~~  
42 ~~after receipt of a written notice of a pending sale~~ that contains the name  
43 and address of the purchaser, ~~all of the following in either paper or~~  
44 electronic format:

- 45 1. A copy of the bylaws and the rules of the association.

- 1           2. A copy of the declaration.
- 2           3. A dated statement containing:
  - 3           (a) The telephone number and address of a principal contact for the
  - 4 association, which may be an association manager, an association management
  - 5 company, an officer of the association or any other person designated by the
  - 6 board of directors.
  - 7           (b) The amount of the common regular assessment and the unpaid common
  - 8 regular assessment, special assessment or other assessment, fee or charge
  - 9 currently due and payable from the selling member. If the request is made by
  - 10 a lienholder, escrow agent, member or person designated by a member pursuant
  - 11 to section 33-1807, failure to provide the information pursuant to this
  - 12 subdivision within the time provided for in this subsection shall extinguish
  - 13 any lien for any unpaid assessment then due against that property.
  - 14           (c) A statement as to whether a portion of the unit is covered by
  - 15 insurance maintained by the association.
  - 16           (d) The total amount of money held by the association as reserves.
  - 17           (e) If the statement is being furnished by the association, a
  - 18 statement as to whether the records of the association reflect any
  - 19 alterations or improvements to the unit that violate the declaration. The
  - 20 association is not obligated to provide information regarding alterations or
  - 21 improvements that occurred more than six years before the proposed sale.
  - 22 Nothing in this subdivision relieves the seller of a unit from the obligation
  - 23 to disclose alterations or improvements to the unit that violate the
  - 24 declaration, nor precludes the association from taking action against the
  - 25 purchaser of a unit for violations that are apparent at the time of purchase
  - 26 and that are not reflected in the association's records.
  - 27           (f) If the statement is being furnished by the member, a statement as
  - 28 to whether the member has any knowledge of any alterations or improvements to
  - 29 the unit that violate the declaration.
  - 30           (g) A statement of case names and case numbers for pending litigation
  - 31 with respect to the unit filed by the association against the member or filed
  - 32 by the member against the association. The member shall not be required to
  - 33 disclose information concerning such pending litigation that would violate
  - 34 any applicable rule of attorney-client privilege under Arizona law.
  - 35           (h) A statement that provides "I hereby acknowledge that the
  - 36 declaration, bylaws and rules of the association constitute a contract
  - 37 between the association and me (the purchaser). By signing this statement, I
  - 38 acknowledge that I have read and understand the association's contract with
  - 39 me (the purchaser). I also understand that as a matter of Arizona law, if I
  - 40 fail to pay my association assessments, the association may foreclose on my
  - 41 property." The statement shall also include a signature line for the
  - 42 purchaser and shall be returned to the association within fourteen calendar
  - 43 days.
- 44           4. A copy of the current operating budget of the association.

1           5. A copy of the most recent annual financial report of the  
2 association. If the report is more than ten pages, the association may  
3 provide a summary of the report in lieu of the entire report.

4           6. A copy of the most recent reserve study of the association, if any.

5           7. A statement summarizing any pending lawsuits, except those relating  
6 to the collection of assessments owed by members other than the selling  
7 member, in which the association is a named party, including the amount of  
8 any money claimed.

9           B. A purchaser or seller who is damaged by the failure of the member  
10 or the association to disclose the information required by subsection A of  
11 this section may pursue all remedies at law or in equity against the member  
12 or the association, whichever failed to comply with subsection A of this  
13 section, including the recovery of reasonable attorney fees.

14           C. The association may charge the member a fee of no more than an  
15 aggregate of four hundred dollars to compensate the association for the costs  
16 incurred in the preparation of a statement or other documents furnished by  
17 the association pursuant to this section for purposes of resale disclosure,  
18 lien estoppel and any other services related to the transfer or use of the  
19 property, **EXCEPT THAT IF THE SELLER PROVIDES THE DISCLOSURE DOCUMENTS**  
20 **PRESCRIBED BY THIS SECTION OR IF THE BUYER WAIVES RECEIPT OF THOSE DISCLOSURE**  
21 **DOCUMENTS, THE ASSOCIATION MAY NOT CHARGE MORE THAN ONE HUNDRED DOLLARS FOR A**  
22 **TRANSFER FEE FOR THE PROPERTY.** In addition, the association may charge a  
23 rush fee of no more than one hundred dollars if the rush services are  
24 required to be performed within seventy-two hours after the request for rush  
25 services, and may charge a statement or other documents update fee of no more  
26 than fifty dollars if thirty days or more have passed since the date of the  
27 original disclosure statement or the date the documents were delivered. The  
28 association shall make available to any interested party the amount of any  
29 fee established from time to time by the association. If the aggregate fee  
30 for purposes of resale disclosure, lien estoppel and any other services  
31 related to the transfer or use of a property is less than four hundred  
32 dollars on January 1, 2010, the fee may increase at a rate of no more than  
33 twenty per cent per year based on the immediately preceding fiscal year's  
34 amount not to exceed the four hundred dollar aggregate fee. The association  
35 may charge the same fee without regard to whether the association is  
36 furnishing the statement or other documents in paper or electronic format.

37           D. The fees prescribed by this section shall be collected no earlier  
38 than at the close of escrow and may only be charged once to a member for that  
39 transaction between the parties specified in the notice required pursuant to  
40 subsection A of this section. An association shall not charge or collect a  
41 fee relating to services for resale disclosure, lien estoppel and any other  
42 services related to the transfer or use of a property except as specifically  
43 authorized in this section. An association that charges or collects a fee in  
44 violation of this section is subject to a civil penalty of no more than one  
45 thousand two hundred dollars.

1 E. This section applies to a managing agent for an association that is  
2 acting on behalf of the association.

3 F. A sale in which a public report is issued pursuant to sections  
4 32-2183 and 32-2197.02 or a sale pursuant to section 32-2181.02 is exempt  
5 from this section.

6 G. THIS SECTION DOES NOT REQUIRE THE PURCHASE OF ASSOCIATION  
7 DISCLOSURE DOCUMENTS, AND THE PURCHASE OF ASSOCIATION DISCLOSURE DOCUMENTS  
8 SHALL NOT BE A CONDITION OF TRANSFERRING TITLE TO A PROPERTY.

9 ~~G.~~ H. For the purposes of this section, unless the context otherwise  
10 requires, "member" means the seller of the unit title and excludes any real  
11 estate salesperson or real estate broker who is licensed under title 32,  
12 chapter 20 and who is acting as a salesperson or broker, any escrow agent who  
13 is licensed under title 6, chapter 7 and who is acting as an escrow agent and  
14 also excludes a trustee of a deed of trust who is selling the property in a  
15 trustee's sale pursuant to chapter 6.1 of this title.

16 Sec. 3. Section 33-1817, Arizona Revised Statutes, is amended to read:  
17 33-1817. Declaration amendment; design, architectural  
18 committees; review; revision

19 A. Notwithstanding any provision in the community documents:

20 1. Membership on a design review committee, an architectural committee  
21 or a committee that performs similar functions, however denominated, for the  
22 planned community shall include at least one member of the board of directors  
23 who shall serve as chairperson of the committee.

24 2. For new construction of the main residential structure on a lot or  
25 for rebuilds of the main residential structure on a lot and only in a planned  
26 community that has enacted design guidelines, architectural guidelines or  
27 other similar rules, however denominated:

28 (a) If the association documents permit the association to charge the  
29 member a security deposit and if the association requires the member to pay a  
30 security deposit to secure completion of the member's construction project or  
31 compliance with approved plans, the deposit shall be placed in a trust  
32 account with the following instructions:

33 (i) The cost of the trust account shall be shared equally between the  
34 association and the member.

35 (ii) If the construction project is abandoned, the board of directors  
36 may determine the appropriate use of any deposit monies.

37 (iii) Any interest earned on the refundable security deposit shall  
38 become part of the security deposit.

39 (b) The association or the design review committee must hold a final  
40 design approval meeting for the purpose of issuing approval of the plans, and  
41 the member or member's agent must have the opportunity to attend the meeting.  
42 If the plans are approved, the association's design review representative  
43 shall provide written acknowledgement that the approved plans, including any  
44 approved amendments, are in compliance with all rules and guidelines in  
45 effect at the time of the approval and that the refund of the deposit

1 requires that construction be completed in accordance with those approved  
2 plans.

3 (c) The association must provide for at least two on-site formal  
4 reviews during construction for the purpose of determining compliance with  
5 the approved plans. The member or member's agent shall be provided the  
6 opportunity to attend both formal reviews. Within five business days after  
7 the formal reviews, the association shall cause a written report to be  
8 provided to the member or member's agent specifying any deficiencies,  
9 violations or unapproved variations from the approved plans as amended ~~and~~  
10 that have come to the attention of the association.

11 (d) Within thirty business days after the second formal review, the  
12 association shall provide to the member, ~~—~~ a copy of the written report  
13 specifying any deficiencies, violations or unapproved variations from the  
14 approved plans as amended that have come to the attention of the association.  
15 If the written report does not specify any deficiencies, violations or  
16 unapproved variations from the approved plans, as amended, that have come to  
17 the attention of the association, the association shall promptly release the  
18 deposit monies to the member. If the report identifies any deficiencies,  
19 violations or unapproved variations from the approved plans, as amended, the  
20 association may hold the deposit for one hundred eighty days or until receipt  
21 of a subsequent report of construction compliance, whichever is less. If a  
22 report of construction compliance is received before the one hundred  
23 eightieth day, the association shall promptly release the deposit monies to  
24 the member. If a compliance report is not received within one hundred eighty  
25 days, the association shall release the deposit monies promptly from the  
26 trust account to the association.

27 (e) Neither the approval of the plans nor the approval of the actual  
28 construction by the association or the design review committee shall  
29 constitute a representation or warranty that the plans or construction comply  
30 with applicable governmental requirements or applicable engineering, design  
31 or safety standards. The association in its discretion may release all or  
32 any part of the deposit to the member before receiving a compliance report.  
33 Release of the deposit to the member does not constitute a representation or  
34 warranty from the association that the construction complies with the  
35 approved plans.

36 B. NOTWITHSTANDING ANY PROVISION IN THE COMMUNITY DOCUMENTS AND  
37 BEGINNING JANUARY 1, 2014, FOR ANY COMMUNITY THAT REVISES OR AMENDS THE  
38 DECLARATION OR ANY ARCHITECTURAL OR DESIGN GUIDELINES, THE FOLLOWING APPLY:

39 1. THE MEMBER PROPOSING THE CHANGE SHALL CIRCULATE THE PROPOSED  
40 REVISIONS AMONG THE MEMBERS OF THE ASSOCIATION AND SHALL OBTAIN THE SIGNATURE  
41 OF AT LEAST ONE PROPERTY OWNER FROM EACH LOT IN THE COMMUNITY AND PROVIDE  
42 THOSE SIGNATURES TO THE BOARD OF DIRECTORS.

43 2. SIGNATURES ARE VALID FOR ONE YEAR FROM THE DATE OF SIGNING, AND ARE  
44 VALID ONLY IF THE SIGNER WAS A RECORDED OWNER OF THE LOT ON THE DATE OF  
45 SIGNING.

1           3. IF APPROVED BY A PROPERTY OWNER FROM EVERY LOT IN THE PLANNED  
2 COMMUNITY AS EVIDENCED BY THE VALID SIGNATURES, THE REVISION IS ADOPTED AND  
3 THE BOARD OF DIRECTORS SHALL RATIFY THE ACTION AND RECORD THE REVISED  
4 ARCHITECTURAL OR DESIGN GUIDELINES OR THE REVISED DECLARATION IN THE OFFICE  
5 OF THE COUNTY RECORDER FOR THE COUNTY IN WHICH THE PLANNED COMMUNITY IS  
6 LOCATED WITHIN THIRTY DAYS AFTER THE RATIFICATION.  
7           C. SUBSECTION B OF THIS SECTION DOES NOT APPLY TO A REVISION OF  
8 ARCHITECTURAL OR DESIGN GUIDELINES OR A REVISION OF THE DECLARATION THAT DOES  
9 NOT INCREASE THE RESTRICTIONS ON A MEMBER'S ABILITY TO USE THE MEMBER'S  
10 PROPERTY.